In the Matter of License No. 289225 Merchant Mariner's Document No. Z-839930-D1
Issued to: William R. Thornton

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1390

William R. Thornton

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 29 November 1962, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for 2 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved allege that while serving as a Junior Third Mate on board the United States SS PRESIDENT JOHNSON under authority of the above described documents, on 25 June 1962, Appellant disobeyed the Master's lawful command and also used obscene language to him.

At the hearing Appellant, represented by professional counsel, entered a plea of not guilty to the change and each specification.

The Investigating Officer introduced in evidence the testimony of the Master and the Purser. Appellant offered in defense the testimony of the Third Mate, his own testimony, and two written reports from physicians who examined Appellant in August 1962.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and each specification had been proved.

FINDINGS OF FACT

On 25 June 1962, Appellant was serving as a Junior Third Mate on board the United States SS PRESIDENT JOHNSON and acting under authority of his documents while the ship was in the port of New York awaiting clearance.

At or about 0530 the Master of the vessel went to Appellant's quarters and ordered him to report to quarantine and immigration officials in the ship's saloon. Appellant acknowledged this but did not comply with the command. About ten to fifteen minutes later the Master again ordered Appellant to report to the saloon.

Appellant rose from his bunk to his feet, addressed an obscene remark to the Master and got back on the bunk. Appellant finally presented himself for quarantine and immigration inspection at approximately 0555.

At about 0915 Appellant voluntarily went to the Master's cabin and apologized for his conduct. The Master, however, stated that he would get a relief for Appellant. A few minutes later Appellant returned to the Master's cabin and stated that he was having a heart attack. An ambulance was called and Appellant was removed from the vessel. He returned to the ship later that day.

BASES OF APPEAL

On appeal, Appellant states that he learned how to take orders as a U. S. Marine, and respected "all superiors N.C.O.S. and commissioned", and that he "could not consciously have insulted my captain in this instance . . . ."

OPINION

It may be noted from the outset that the Examiner rejected Appellant's claim of amnesia. This rejection is not unreasonable in view of the Examiner's acceptance of the Master's testimony that Appellant voluntarily approached the Master with an apology of "I am sorry for the way I acted this morning . . . "(R.14) Since the Examiner is in a better position to observe the witnesses and judge their credibility, I will not overturn this determination. Commandant's Appeal Decisions Nos. 1376, 1368, 1367, 1347, 1346, and 1334. Incidentally, it is further noted that Appellant's appearance at the ship's saloon, at some later time, is hardly consistent with his claim of amnesia for the period during which the Master issued his order to Appellant. The Examiner, therefore, did not act arbitrarily when he in effect rejected the physicians' ex parte opinions as to the cause of Appellant's behavior. See 32 C.J.S. Evidence § 569. However, in view of Appellant's insistence during the hearing and on appeal that he does not remember committing the alleged acts of misconduct, and if he did commit them, it was not "consciously", a few comments on the topic of his mental responsibility are in order.

To support Appellant's contention of having suffered a loss of memory, defense counsel introduced in evidence two ex parte statements by physicians offering explanations of Appellant's inappropriate behavior. It is noted that in Dr. Greenberg's report "patient claims that he has an amnesia for this episode. It occurred approximately an hour after he had an acute anxiety seizure manifested by palpitation of the heart, extreme apprehension and the belief that he was suffering from a heart attack. He took a fairly heavy dose of medicine for this and as

stated above approximately an hour later was when the alleged incident occurred . . ." Def.Ex. C (emphasis added). Since this statement, based on information given by Appellant to dr. Greenberg, is at variance with his own testimony during the hearing and with all other evidence that the acts of misconduct occurred actually about three hours before Appellant's so-called "heart attack", Dr. Greenberg's conclusion that he is "convinced that the patient's disturbance with his captain occurred during a time when he was not responsible mentally. . . " is, in my opinion, of little or no value.

The other physician's statement, not as positive and emphatic as Dr. Greenberg's is as follows: "In my professional experience I have seen inappropriate behavior reactions to stress situations, sometimes associated with amnesia, and I feel that this might offer a possible explanation to Mr. Thornton's case . . ." Def. Exh.C. (emphasis added). This is all the evidence, aside from Appellant's own testimony, which was offered on Appellant's mental responsibility for the acts of alleged misconduct.

The claim of amnesia is often used by persons in legal difficulties. Medical authorities are of the opinion that an amnesic condition may derive from a variety of sources and may be temporary or permanent in nature. There are five commonly know causes of amnesia: 1) hysteria, 2) psychosis, 3) alcoholism, 4) head injury, and 5)epileptic fugue. Davidson, Forensic Psychiatry pp. 15-17 (1952). For a more detailed account of the mechanics of amnesia see Vol. 1 Gray, Attorneys' Textbook of Medicine 3d ed, § 96.01 et seq (1949). While it is true that some forms of genuine amnesia may, under certain circumstances, absolve an accused person from legal responsibility for his act, this is not true in every case. The law on this point is quite clear. Amnesia, in order to remove responsibility, must be linked to other evidence--"evidence suggesting, in some measure at least, the existence of a mental state which would serve to negate criminal responsibility." United States v. Olvera, 15 CMR 134, 141 (1954). See also Davidson, supra, and United States v. Boultinghouse, 29 CMR 537 (1960) for excellent discussions of this point. Amnesia then is--in and of itself--"a relatively neutral circumstance in its bearing on criminal responsibility . . ." United States v. Olvera, supra, at 141.

Having examined the evidence in the record most favorable to Appellant, I fail to see any evidence of past mental disorders. As a matter of fact if Appellant did experience a loss of memory, it was induced primarily by the use of self-prescribed medications including intoxicants. It is a general rule of law that intoxication resulting from the voluntary use of alcohol or drugs affords no defense, except that it may be sufficient to deprive the

accused person of the capacity to entertain a specific intent essential to the commission of a particular offense. See 22 C.J.S. Criminal Law § 55 et seq. There is no requirement of specific intent in the instant case in order to find Appellant guilty of the offenses charged.

Appellant's counsel urged that the Government, in order to sustain its burden of proof, must show that Appellant intentionally disobeyed the Master and also intentionally made an obscene remark. This latter contention can be dismissed by stating that Appellant presumably intended to say what he said. The specification that Appellant did "disobey a lawful command given to you by the Master . . " presents a more difficult problem.

It is well settled that the primary and paramount duty of the sailor is implicit obedience to every lawful command. The Shawnee, 45 Fed. 769 (1891). There is a distinction between a willful disobedience to a command and a mere failure to obey. The former offense implies an "intentional" act, whereas the latter does not. The specification with which Appellant was charged falls within this latter category. The test here is four-fold: a) was a lawful order issued; b) did Appellant have knowledge of this order; c) did Appellant have a duty to obey this order; and d) did Appellant fail to obey it. There is no question as to whether the Government carried its burden as to a), c) and d). Element b) is proved by the Master's own testimony that Appellant answered, when first ordered by the Master to report to the saloon, "O.K.C (R.12). The second time the Master ordered Appellant to report, Appellant got up, made an obscene remark, and got back on his bunk (R. 10). The inference to be drawn from these facts is that Appellant had knowledge of the Master's order.

It is stated in the Examiner's decision that Appellant has been serving as a licensed officer for nearly twenty years with "no record of prior misconduct." This statement is not accurate. On 31 August 1956 Appellant's documents were suspended for two months on twelve months' probation for failure to perform his duties.

Although there are extenuating circumstances present in the instant case, such as use of self-prescribed medications to relieve pain, the order of the Examiner is justified.

ORDER

The order of the Examiner dated at San Francisco, California, on 29 November 1962, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard

Acting Commandant

Signed at Washington, D. C., this 30th day of April 1963.